recognized, it has not been necessary in this state for a purchaser of such paper, which is fair on its face, to make inquiry as to its validity before buying it, and much business has been done on this basis. In other jurisdictions, where the opposite rule prevails, the practice has been different, and it would be manifestly a violation of the principle on which the doctrine of *stare decisis* rests for this court, after the business of the state has adjusted itself to the rule which it has laid down, now to reverse itself, and lay down the opposite rule."

CORRESPONDENCE.

LIMITATION OF ACTIONS ON IMPLIED COVENANTS.

To the Editor of the Virginia Law Register:

It is with some diffidence that a criticism is ventured of a decision of our Supreme Court of Appeals, especially as it can be of but little benefit for practical purposes to question the rulings of our court of highest resort. Yet, as the writer has urged, and the Circuit Court for Norfolk county has arrived at a conclusion different from that announced in the decision of *Taylor* v. *Forbes*, 9 Va. Law Register, page 412, where it is held that the limitation of an action on a debt due from the acceptance of a deed, in which the promise to pay is clearly made, is three years if the instrument is not signed by the party to be charged thereby, it is deemed but fair that the authorities relied on for that decision be given. The facts in the case before Judge Prentis were about as follows:

In 1873 a deed poll was made by which certain land was conveyed in consideration of the grantee yielding and paying one hundred dollars per year for a period of years. The parties holding under the deed were in default in their payments for about eight years, and it had been more than three years since the right of action had accrued on the last amount due. It was admitted that the account was stated correctly, but the plea was made that the right of action was barred by the statute and that the limitation was three years.

Judge Prentis sustained a motion to reject this plea, holding that the limitation was ten years. The main authority relied on by the plaintiff in that case was the wording of the Virginia Code, Section 2920, which seems to have escaped the attention of the Supreme Court of Appeals in the case in question, and the wording of which is most significant. With irrelevant matter omitted, the section is as follows:

"Sec. 2920. Limitation of personal actions generally. Every action to recover money which is *founded* upon an award or any contract other than a judgment or recognizance, shall be brought within the following number of years next after the right to bring the same shall have first accrued, that is to say: if the case be upon an indemnifying bond taken under any statute, ... or upon any other contract *by writing un-*

der seal, within ten years; if it be upon an award or upon a contract by writing *signed* by the party to be charged thereby, or his agent, *but not under seal,* within five years . . . . . ."(Italics writer's).

As there was no question that the action was *founded* on a contract by writing and under seal, it was urged that, as the legislature, in fixing the limitation of actions on contracts that were in writing, but *not under seal,* expressly required them to be signed by the party to be charged thereby, or his agent, the inference was irresistible, under well known maxims of law, that when the action was founded on a contract by writing under seal, it did not have to be signed by the party to be charged thereby, or his agent, to make the limitation ten years, and in this view Judge Prentis concurred. The same reasoning would apply to *Taylor* v. *Forbes.*

It seems that a fair interpretation of the statute in question will admit of no other construction, especially as to hold the contrary will frequently destroy the mutuality of contracts. For instance, suppose a deed poll contained mutual promises to pay; under the ruling of the court in *Taylor* v. *Forbes,* if the action were brought by the grantor against the grantee the limitation would be three years, but if brought by the grantee against the grantor it would be ten years, although their actions arose under the same contract—a conclusion which would neither be fair nor reasonable in the absence of express legislative requirement.

While, as the court says, there are no decisions in Virginia directly in point, the Virginia court has given implied contracts the force and effect of written ones, and by parity of reasoning should in proper cases give implied contracts the effect of sealed ones. In *Woodward* v. *Foster,* 18 Gratt. 200, and *Martin* v. *Lewis,* 30 Gratt. 672 and 682, is is held that the implied contract between endorser and endorsee on a bill of exchange could not ordinarily be altered by parol evidence. They have even gone further, and held that an acknowledgment of a debt under seal, when not made *diverso intuitu,* is regarded as a specialty, though the promise is merely implied. See IV VIRGINIA LAW REGISTER, page 459, and cases there cited.

It is there very pertinently suggested by the Editor: "It is probable, therefore, that a promise implied from a written contract will be regarded under the statute above quoted as a contract by writing; indeed any other ruling would exclude the implied promise to pay interest after maturity on a promissory note; while the note would come within the five year period of limitation, the interest would be barred in three years, a result which is too inconvenient to be seriously considered."

Among the cases which the court relies on in the case of *Taylor* v. *Forbes* to support its construction is *Willard* v. *Wood,* 164 U. S. 502 (also reported in 135 U. S. 309). An examination of that case will disclose that the decision of the court was based on a statute of the District of Columbia, while the brief of counsel for appellant cites several New York cases, one directly in point holding that contracts of this kind are specialties, and not simple contracts. Most of the cases cited by the court in *Taylor* v. *Forbes* went off on questions of pleading, which are well known to be extremely technical. The point of pleading is disposed of by the Virginia legislature, Acts 1897-98, page 103; but, in the view of the writer, the ques-

tion is settled by section 2920, above quoted, and it is to be regretted that the court in construing the statute of limitations should have omitted all reference to that section, especially when the wording is as significant as it is. Its conclusion makes the action of the Legislature and of the eminent gentlemen who revised our Code appear to have been done with seemingly no purpose—a conclusion at which the courts at least are not permitted to arrive.

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Norfolk, Va.

WHAT IS THE JURISDICTIONAL AMOUNT OF THE COURT OF APPEALS OF VIRGINIA IN MATTERS MERELY PECUNIARY?

It has been generally assumed by the profession that since the new Constitution went into effect the jurisdictional amount of the Court of Appeals has been reduced from $500 to $300, and this has been taught as the law in one, at least, of the law schools of the State. But is it a fact that the amount necessary for appeal is now only $300?

A careful reading of section 88, Art. 6, of the new Constitution will reveal several almost insuperable obstacles to the maintenance of this view. This section, after conferring *original* jurisdiction in *habeas corpus*, mandamus and prohibition cases, and *appellate* jurisdiction in cases involving the constitutionality of a law, and cases involving life and liberty, provides that, "it shall also have appellate jurisdiction *in such other cases* within the limits hereinafter defined *as may be prescribed by law.*" Now what are the limits? "The court *shall not* have jurisdiction in civil cases where the matter in controversy, exclusive of costs, etc., . . . is less in value or amount than $300." It does not say that the court *shall have* jurisdiction where the amount in controversy is $300, but $300 is the limit "hereinafter defined" within which the court has jurisdiction "*as prescribed by law.*" The legislature has prescribed $500 as the amount from which an appeal will lie. This is the amount "prescribed by law" until the General Assembly sees fit to change it. But when can the General Assembly change it? "After the year 1910 the General Assembly may change the jurisdiction of the court in matters *purely pecuniary.*" Thus it would seem that not only is the amount fixed at $500, but it is impossible for the legislature to change it prior to 1910.

The intention of the Convention in inserting these provisions was that $300 should be the amount from which an appeal would lie in matters purely pecuniary, and that this should remain the jurisdictional amount until 1910 when the General Assembly might raise it if practical experience demonstrated that $300 was too small, and the court became congested with this class of cases. The journal of the Convention does not throw any light on the matter as the section involved was passed without discussion by the body as a whole.

It seems clear this provision is not self-executing because its express language requires legislative action to give it effect. It says, "in such other